

DOC NO  
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AO 243 (Rev. 01/15)

Page 2

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT

SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b> WESTERN		District WISCONSIN, MADISON DIVISION
Name (under which you were convicted): THOMAS VALLEY		Docket or Case No.: 11-cr-133-BBC
Place of Confinement: UNITED STATES PENITENTIARY, TUCSON, ARIZONA.		Prisoner No.: 07544-090
UNITED STATES OF AMERICA		Movant (include name under which convicted) THOMAS VALLEY

## MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

(b) Criminal docket or case number (if you know): 11-cr-133-BBC

2. (a) Date of the judgment of conviction (if you know): April 23rd, 2013

(b) Date of sentencing: August 14th, 2014

3. Length of sentence: 240-Mths, CNT-1 & 2 / Life Supervision.

4. Nature of crime (all counts): Count-1: 18:2252(a)(2) (Minor-B) & 18:2252(a)(2)(Minor-C), Knowingly received cellular phone text message i.e., a visual depiction of "[ ]" minor engaging in sexually explicit conduct; and 18:2253 Forfeiture .

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one) N/A Jury ☐ Judge only ☐
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? N/A Yes ☐ No ☐
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

## 9. If you did appeal, answer the following:

(a) Name of court: U.S. Court of Appeals for the Seventh Circuit(b) Docket or case number (if you know): 13-2870(c) Result: Denied without determination on the merits.(d) Date of result (if you know): November 3, 2014(e) Citation to the case (if you know): N/A(f) Grounds raised: Miranda Violations.....Ground-1  
Stale Warrant.....Ground-2  
Unreasonable Sentence...Ground-3(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): 14-6418(2) Result: Denied without determination on the merits.(3) Date of result (if you know): November 3rd, 2014(4) Citation to the case (if you know): N/A(5) Grounds raised: Miranda Violations.....Ground-1  
Stale Warrant.....Ground-2  
Unreasonable Sentence.....Ground-3

## 10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

## 11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A(2) Docket or case number (if you know): N/A(3) Date of filing (if you know): N/A(4) Nature of the proceeding: N/A(5) Grounds raised: N/A

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐ N/A

(2) Second petition: Yes ☐ No ☐ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

This is Petitioner's First 28:2255 Motion.

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

AO 243 (Rev. 01/15)

Page 5

PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BY VIRTUE OF COUNSEL'S FAILURE TO SUBJECT THE PROSECUTIONS CASE AGAINST PETITIONER TO A MEANINGFUL GROUND ONE: ADVERSARIAL TESTING IN PROTECTION OF PETITIONER'S VITAL LIBERTY INTERESTS AND INNOCENCE TO THE CHARGES ALLEGED.

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
- (a) Petitioner's counsel Misrepresented the elements of the law to petitioner and induced him to plead guilty when he was Actually Innocent of "Knowingly" receiving Child Pornography on both counts, as the subject matter of the Chat Evidence reveals Petitioner's Request for "Sexy Dress attire" (i.e., Dresses) and not a request for Nude Photo images.
- (b) Petitioner's counsel deceived Petitioner to Plead Guilty to the instant offense[s] proclaiming the evidence to depict "Minors engaging in sexually explicit conduct" when the Evidence of image reveals exotic and/or stripp dancing by the minor[s], unknown to petitioner of what the content would be.
- (c) Petitioner's counsel neglected to challenge the governments jurisdiction of any of the instant offenses under 18:2252 as the government could not establish congressionally required child porn materials or images moving across state lines, thus divesting the government of prosecution jurisdiction.

\*\*\*\*\* SEE ATTACHMENT-1, ACCOMPANYING THIS PETITION.....>

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

**Ineffective assistance of trial counsel**

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐ N/A

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐ N/A

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: THIS IS PETITIONER'S FIRST 28:2255 PETITION.

**GROUND TWO:** PETITIONER WAS SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT BY VIRTUE OF INEFFECTIVE COUNSEL'S FAILURE TO CHALLENGE PROPORTIONALITY STANDARDS AND ALLOWING CONVICTION FOR WRONG STATUTE.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(a) As demonstrated at Ground One (a) through (d) above, Petitioner's counsel allowed Petitioner to be sentenced to two consecutive 20-year sentences for criminal conduct Petitioner did not commit, infringing Petitioner's 8th and 5th Amendment Rights, by punishing Petitioner for an offense not committed.

(b) The record reveals Petitioner's lack of intent, knowledge, and propensity to commit the alleged offense, thus outweighing the proportionality of the nature of the offense charged; nor suitable under relevant statute 18:2252(a)(4)(B), as the Judge intended to maximize sentence concurrently (40 years), when minimum of 5 years CC, was most appropriate under applicable statute, as no career recidivism was relevant, no physical infractions were involved, the purported victims were a part of the same scheme, at Ground One(a) above, and the crimes alleged did not involve the predicate element, i.e., child porn, within any reasonable sense.

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

INEFFECTIVE ASSISTANCE OF COUNSEL

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N / A

Name and location of the court where the motion or petition was filed:

N / A

Docket or case number (if you know): N / A

Date of the court's decision: N / A

Result (attach a copy of the court's opinion or order, if available):

N / A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

N / A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

N / A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

N / A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N / A

Docket or case number (if you know): N / A

Date of the court's decision: N / A

Result (attach a copy of the court's opinion or order, if available):

N / A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: This is Petitioner's first 28:2255.

GROUND THREE: PETITIONER WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL AND DUE PROCESS ON FIRST APPEAL OF RIGHT, BY VIRTUE OF APPELLATE COUNSEL'S CONFLICT OF BEING TRIAL COUNSEL, FAILING TO SUBJECT THE APPELLATE PROCESS TO MEANINGFUL ADVERSARIAL TESTING IN PROTECTION OF PETITIONER'S VITAL LIBERTY INTERESTS.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Incorporating Ground One and its subcategories as if fully set out herein, Appellate Counsel was acting under conflicting interests - being Trial Counsel - by not raising the aforementioned Ground One issues on himself and the facts relating thereto, to wit:

(i) Petitioner's counsel failed to challenge Miranda violations as to suspect account-

AO 243 (Rev. 01/15)

Page 8

-cont- ability; i.e., "the target of the warrant was not Petitioner", in addition to Counsel's Appellate Argument of "Blunt Force", detained Miranda violations which has never been ruled on its merits with finality [Opening App. Brief, @ Pg:14].  
(ii) Petitioner's Counsel failed to challenge the validity of the warrant on grounds of (probable cause); (misrepresentating the veracity of the evidence); (officer committing perjury of expert's position as an officer, when not); and lack of Jurisdiction / Authority to issue warrants by Court Commissioner, in violation of Fourth Amendment -cont-

**(b) Direct Appeal of Ground Three:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

INEFFECTIVE ASSISTANCE OF COUNSEL

**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N / A

Name and location of the court where the motion or petition was filed:

N / A

Docket or case number (if you know): N / A

Date of the court's decision: N / A

Result (attach a copy of the court's opinion or order, if available):

N / A

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☒

N / A

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☒

N / A

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☒

N / A

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N / A

Docket or case number (if you know): N / A

Date of the court's decision: N / A

Result (attach a copy of the court's opinion or order, if available):

N / A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: This is Petitioner's first 28:2255 Petition.

**GROUND FOUR:** N / A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N / A

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

N / A

(2) If you did not raise this issue in your direct appeal, explain why:

N / A

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

N / A

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N / A

Name and location of the court where the motion or petition was filed:

N / A

Docket or case number (if you know): N / A

Date of the court's decision: N / A

Result (attach a copy of the court's opinion or order, if available):

N / A



(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒ N / A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒ N / A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☒ N / A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N / A

Docket or case number (if you know): N / A

Date of the court's decision: N / A

Result (attach a copy of the court's opinion or order, if available):

N / A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

N / A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N / A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒ N / A

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N / A

AO 243 (Rev. 01/15)

Page 11

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing: Gregory N. Dutch  
119 Martin Luther King, Jr. Boulevard Suite 202  
Madison, Wisconsin 53703-3355

(b) At the arraignment and plea:

Gregory N. Dutch

(c) At the trial:

Gregory N. Dutch

(d) At sentencing:

Gregory N. Dutch

(e) On appeal:

Gregory N. Dutch

(f) In any post-conviction proceeding:

N / A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N / A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N / A

(b) Give the date the other sentence was imposed: N / A

(c) Give the length of the other sentence: N / A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒ N / A

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

N / A

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

AO 243 (Rev. 01/15)

Page 13

Therefore, movant asks that the Court grant the following relief:

Vacate convictions with prejudice, or in the alternate, withdraw plea and grant trial.

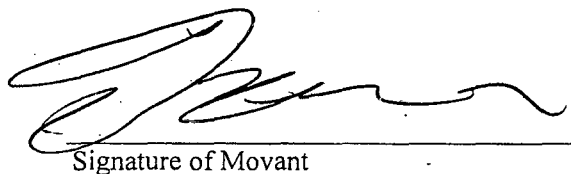
or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on October 28th, 2015  
(month, date, year)

7014 2870 0001 4643 3370

Executed (signed) on October 28, 2015 (date)

  
\_\_\_\_\_  
Signature of Movant

Mr. Thomas Valley Reg.#07544-090  
USP-Tucson. PO. Box # 24550  
Tucson, Az. 85734